

DEPARTMENT OF JUSTICE

**SB 163: Clarifying that Acceptance of a Nolo Contendere Plea
in a Criminal Case Depends on Consent of Court and Prosecutor**

Background

A defendant who makes a nolo contendere plea agrees not to contest the charges against him, but does not admit guilt. A nolo contendere plea cannot be used as an admission of guilt in other proceedings, such as a civil suit arising from the same case.

The 2003 Legislature amended MCA 46-16-105 to clarify that a court was required to accept a plea of guilty before trial if:

- the plea was entered in open court and
- the court had informed the defendant of the consequences of the plea and maximum penalty provided by law.

That 2003 amendment inadvertently eliminated the court's discretionary authority to accept a plea of nolo contendere prior to trial and, like acceptance of a guilty plea, made acceptance of a nolo contendere plea mandatory.

Purpose of SB 163

SB 163 will amend MCA 46-16-105 to clarify that acceptance of a nolo contendere plea is discretionary and dependent upon the consent of both the prosecutor and the court.

It also will eliminate the conflict with another statute that states that a defendant may only enter a plea of nolo contendere with the consent of the court and the prosecutor (MCA 46-12-204).